

1 ROBERT P. TAYLOR (SBN 46046)  
Email: rtaylor@mintz.com  
2 BRYAN J. SINCLAIR (SBN 205885)  
Email: bsinclair@mintz.com  
3 JEFFREY M. RATINOFF (SBN 197241)  
Email: jratinoff@mintz.com  
4 MINTZ LEVIN COHN FERRIS GLOVSKY AND  
POPEO, PC  
5 1400 Page Mill Road  
Palo Alto, California 94304-1124  
6 Telephone: (650) 251-7700  
Facsimile: (650) 251-7739  
7  
8 Attorneys for Defendant,  
SOFTSCAPE, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware  
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,  
16 and DOES 1-10, inclusive,

17 Defendants.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CV 08-1376 CW (BZ)

**DISCOVERY MATTER**

***EX PARTE* MOTION FOR  
ADMINISTRATIVE RELIEF TO  
EXTEND TIME FOR THE PARTIES TO  
FILE PORTIONS OF REPORTER'S  
TRANSCRIPT FOR JULY 3, 2008  
HEARING UNDER SEAL;  
DECLARATION OF JEFFREY  
RATINOFF**

Judge: Honorable Claudia Wilken  
Magistrate: Honorable Bernard Zimmerman

Complaint filed: March 11, 2008  
Trial Date: None set

1 Pursuant to Civil L.R. 6-3, 7-10, 7-11, and 79-5, Defendant Softscape, Inc. (“Softscape”)  
2 hereby moves the Court for an ex parte order to extend the time for the parties to review the  
3 reporter’s transcript from the July 3, 2008 hearing in this matter and to file respective requests that  
4 portions of the transcript discussing highly confidential and proprietary information to be filed  
5 under seal.

6 **Factual and Procedural Background**

7 The Protective Order governing this case (Docket No. 89) requires the court reporter to  
8 separately bind and not make publicly available material protected under the Protective Order. At  
9 the July 3rd discovery hearing before this Court, certain matters that were designated by the parties  
10 as either “Highly Confidential - Attorneys Eyes Only” or “Highly Confidential - Outside Attorneys  
11 Eyes Only” were discussed.

12 In particular, Softscape’s extremely sensitive confidential competitive business information,  
13 which was designated as “Highly Confidential - Outside Attorneys Eyes Only” prior to the hearing,  
14 was discussed in detail. Such information was also the subject of a prior motion to seal portions of  
15 the parties’ Joint Case Management Statement. (Docket Nos. 137, 142). Recognizing the  
16 confidential nature of this information, the Honorable Claudia Wilken granted Softscape’s request  
17 and ordered that the portions of the statement discussing the information (which was also discussed  
18 at the July 3rd hearing) be filed under seal. (Docket No. 148).

19 The court reporter responsible for the preparation of the transcript for the July 3rd discovery  
20 hearing previously indicated that absent an order from this Court, the transcript would be made  
21 publicly available and electronically available on Pacer. If this were to occur, Softscape would have  
22 suffered irreparable harm from the disclosure of certain information discussed at the hearing.  
23 Consequently, Softscape sought an unopposed ex parte order from the Court requiring the Court  
24 Reporter to finalize the transcript and to allow the parties sufficient time to file a motion for  
25 administrative relief to seal portions of the transcript that contained their respective confidential  
26 information. (Document Nos. 161 & 162). On July 11, 2008, this Court granted Softscape’s  
27 request where the Court Reporter was required to provide a final transcript by July 16, 2008 and the  
28 parties would have until July 30, 2008 to file a motion to seal. (Document No. 163).

**The Requested Relief**

Since the Court issued its July 11 Order, Softscape has repeatedly sought to obtain the final transcript from the Court Report. In response, the Court Reporter indicated that she was engaged in a lengthy trial and was having difficulty completing the final transcript. As of the date of filing this request, Softscape has not received a final transcript of the July 3rd discovery hearing.

Consequently, Softscape cannot comply with the deadline to file a motion to seal previously set by the Court's July 11th Order. Thus, to ensure that Softscape has adequate time to receive, review and seek to seal the portions of the transcript that reference Softscape's highly confidential information, Softscape respectfully requests that the Court modify its July 11th Order as follows:

1. The time for the Court reporter to provide the parties a final transcript of the July 3, 2008 discovery hearing before this Court is extended from July 16, 2008 to August 13, 2008; and
2. The parties must file any motion for administrative relief administrative relief per N.D. Cal. L. R. 79-5 to designate and file confidential portions of the transcript under seal within 14 days of service of the final transcript.

Softscape believes the foregoing modification of the Court's July 11 Order is necessary to ensure that it will not suffer irreparable harm from the disclosure of certain information disclosed and discussed at the hearing.

Dated: July 29, 2008

Respectfully submitted,

MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO P.C.

/s/ Jeffrey M. Ratinoff

By: JEFFREY M. RATINOFF  
Attorneys for Defendant,  
SOFTSCAPE, INC.

**DECLARATION OF JEFFREY M. RATINOFF**

I, Jeffrey M. Ratinoff, declare as follows:

1. I am Of Counsel at the law firm of Mintz Levin Cohn Ferris Glovsky & Popeo PC, counsel of record for Defendant Softscape, Inc. ("Softscape"). I make this declaration based on my personal knowledge, and if called to testify would competently testify to the matters contained herein.

2. On April 23, 2008, this Court entered a Protective Order regarding confidentiality in this case. Pursuant to paragraph 5.2(b) and 10 of the Protective Order, any document filed in this action which contains confidential information should be filed under seal in accordance with Civil Local Rule 79-5.

3. At the July 3, 2008 discovery hearing before the Honorable Bernard Zimmerman, information was discussed that had been previously designated by Softscape as "Highly Confidential - Outside Attorney's Eyes Only" under the terms of the Protective Order. Such information constitutes extremely sensitive, confidential, competitive business information whose disclosure to another party or non-party could create a substantial risk of serious injury that can be avoided by keeping the information confidential by filing under seal.

4. Substantially similar information was disclosed in the parties' Joint Case Management Statement. As such, Softscape sought an order sealing portions of the statement disclosing this information. The Honorable Claudia Wilken acknowledged the confidential nature of this information and ordered that portions of the statement referencing this information be filed under seal per Softscape's request.

5. On July 9, 2008, I spoke with Connie Kuhl, the court reporter at the July 3rd hearing, concerning the status of the transcript and whether the parties would have an opportunity to seek having portions filed under seal before it is placed on Pacer. She indicated that she intended to place the transcript on Pacer as earlier as July 11, 2008 without first allowing the parties to review the transcript. I explained to her that the parties needed to review the final transcript and seek to seal portions of it before it was placed on Pacer. Ms. Kuhl indicated that she would not provide the transcript to the parties without instructions from the Court. She also agreed to not place the

1 transcript on Pacer until the Court provided further instructions. Thus, I was required to seek ex  
2 parte relief from the Court to ensure this sensitive information was not publicly disclosed

3 6. Since the Court issued its July 11 Order requiring the Ms. Kuhl to complete the  
4 preparation of the final transcript by July 16, my office has communicated with Ms. Kuhl where she  
5 informed us that she was currently working on a complicated trial. As a result, Ms. Kuhl was  
6 having difficulty completing the final transcript for the July 3rd discovery hearing.

7 7. As of the time of this declaration, Softscape has not yet received a final version of  
8 the transcript for that hearing. Consequently, Softscape cannot comply with the deadline to file a  
9 motion to seal previously set by the Court's July 11 Order. Thus, to ensure that Softscape has  
10 adequate time to receive, review and file a motion to seal the portions of the transcript that reference  
11 Softscape's highly confidential information, I believe it is necessary that the deadline to file such a  
12 motion be extended and work off of the date of service of the final transcript.

13 8. I believe the modification of the Court's prior order is necessary to ensure that  
14 Softscape will not suffer irreparable harm from the disclosure of certain information disclosed and  
15 discussed at the July 3rd hearing.

16 9. On July 29, 2008, I sought confirmation from counsel for SuccessFactors on whether  
17 they would oppose a request for an extension of the deadline. As of the time of this declaration, I  
18 did not receive any objection to the filing of this request for an extension.

19 I declare under penalty of perjury, under the laws of the State of California that the foregoing is  
20 true and correct, and that this declaration was executed in Palo Alto, California.

21  
22 Dated: July 29, 2008

/s/ Jeffrey M. Ratino

23 JEFFREY M. RATINOFF  
24  
25

26 4392031v.1  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SUCCESSFACTORS, INC, a Delaware  
corporation,

Plaintiff,

vs.

SOFTSCAPE, INC., a Delaware corporation,  
and DOES 1-10, inclusive,

Defendants.

Case No. CV 08-1376 CW (BZ)

**[PROPOSED] ORDER GRANTING  
SOFTSCAPE'S *EX PARTE* MOTION  
FOR ADMINISTRATIVE RELIEF TO  
EXTEND TIME FOR THE PARTIES TO  
FILE PORTIONS OF REPORTER'S  
TRANSCRIPT FOR JULY 3, 2008  
HEARING UNDER SEAL**

1 Having considered Defendant's *Ex Parte* Administrative Motion to Extend Time for the  
2 Parties to File Portions of Reporter's Transcript Under Seal and the supporting Declaration of  
3 Counsel, and good cause appearing therefore, the Court, HEREBY ORDERS the following:

4 1. The Court Reporter for the July 3, 2008 hearing before this Court is to provide  
5 copies of the transcript of the hearing to counsel for both parties no later than August 13, 2008;

6 2. The parties are to file any motion for administrative relief per N.D. Cal. L. R. 79-5 to  
7 designate and file confidential portions of the transcript under seal within fourteen (14) days of  
8 service of the final transcript for the July 3, 2008 hearing; and

9 3. The Court Reporter is directed not release the transcript for the July 3, 2008 hearing  
10 to the public, place the transcript on the publicly available paper docket or on Pacer, or make it  
11 otherwise available to the public, until such motion has been ruled on, and then only place the  
12 transcript on Pacer with the appropriate portions redacted as so further ordered by the Court.

13 4. Softscape, Inc. is to arrange for receipt and service of the transcript.

14 **IT IS SO ORDERED.**

15 Dated: \_\_\_\_\_  
16

17 \_\_\_\_\_  
18 The Honorable Bernard Zimmerman  
19 United States Magistrate Judge  
20

21 4391796v.1  
22  
23  
24  
25  
26  
27  
28